

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 3273

**DATE:** March 26, 2014

**Version:** Delete everything amendment (H3273DE1-3)

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**Subject:** Omnibus Public Safety Supplemental Budget Bill

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### Section

#### **Article 1: Public Safety and Corrections Appropriations**

##### **Overview**

This article contains supplemental appropriations to the Department of Corrections, the Department of Public Safety, and the POST Board.

#### **Article 2: Public Safety and Corrections**

- 1**      **Disclosure.** Authorizes disclosure of private or confidential court services data to crime victims as provided in section 13.  
**Effective.** January 1, 2015. [H.F. 2142, 2<sup>nd</sup> eng., § 1]
  
- 2**      **Public benefit data.** Provides that upon request, the commissioner of corrections or its designee shall disclose, to a victim of domestic violence, enhanced notification of the 5-digit zip code of the offender's residency upon or after release from DOC custody, unless the offender is not under supervision, the zip code is unavailable, or disclosure creates a risk.  
  
(§ 609.02, subd. 16 – definition of “qualified domestic violence-related offenses”)  
**Effective.** January 1, 2015. [H.F. 2142, 2<sup>nd</sup> eng., § 2]

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**3, 6, 12, & 14** **Fifth-degree criminal sexual conduct.** Expand the felony 5<sup>th</sup> degree criminal sexual conduct (CSC) offense. Under these sections, a person who engages in either (1) nonconsensual sexual contact with another person, or (2) masturbation or lewd exhibition of the genitals in front of a minor under the age of 16 may be sentenced to up to ten years in prison if the person has a qualifying prior offense within the past ten years.

The list of qualifying prior offenses is as follows: (1) criminal sexual conduct 1-5 (§§ 609.242 to 609.3451); (2) criminal sexual predatory conduct (§ 609.3453); (3) solicitation of a child (§ 609.52); (4) indecent exposure (§ 617.23); (5) use of a child in a sexual performance (§ 617.246); (5) child pornography (§ 617.247); or (6) a similar qualifying offense from another state. A juvenile adjudication is not a prior offense for purposes of this offense.

Also authorizes a court to stay a sentence for up to six years for a person who commits a gross misdemeanor 5<sup>th</sup> degree CSC offense. **[H.F. 1851, as amended]**

**4 & 5** **Fire safety account.** Provides that the commissioner of public safety shall not expend funds from the fire safety account without the recommendation of the Fire Service Advisory Committee. Provides that the advisory committee does not expire. **[H.F. 2972]**

**7 to 11** **Position of authority; criminal sexual conduct.** Amend the definition of “position of authority” in the criminal sexual conduct statutes. Currently, felony penalties apply to an adult who has sexual contact with a 16 or 17 year old juvenile and the adult is in a position of authority over the juvenile. These sections extend the definition so that an adult who was recently (*i.e.*, within the past six months) in a position of authority over a 16 or 17 year old juvenile is also subject to criminal penalties for having a sexual relationship with the juvenile.

Also create parallel new offenses in the 3<sup>rd</sup> and 4<sup>th</sup> degree criminal sexual conduct statutes for a person who works or volunteers at a school and has a sexual relationship with a student who the perpetrator came into contact with because of the perpetrator’s duties at the victim’s school. The perpetrator does not need to be in a position of authority for these offenses to apply. Like the broadened definition of position of authority discussed above, these offenses cover cases where the perpetrator no longer works or volunteers at the victim’s school but did so within the preceding six months. These offenses protect victims between the ages of 13 and 18. The perpetrator must be at least four years older than the victim.

**[H.F. 1126, 1<sup>st</sup> eng.]**

**13** **Offender location.** Adds a new subdivision to section 611A.06 – Right to Notice of Release. Provides a victim with the same rights as found in section 2. Classifies the victim’s identifying data as private data on individuals.

**Effective.** January 1, 2015. **[H.F. 2142, 2<sup>nd</sup> eng., § 3]**

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### **Article 3: Disaster Assistance for public entities; federal aid granted**

#### **Overview**

This article requires the state to pay 100 percent of the nonfederal share (often referred to as the “match”) of FEMA-eligible disaster costs for state agencies, American Indian tribes, and local units of government. It also creates a new disaster contingency account to capture expiring appropriations from prior disasters and to statutorily appropriate money to the Department of Public Safety (DPS) to (1) pay the nonfederal share for state agencies, local units of government, and American Indian tribes, and (2) award state disaster assistance grants to American Indian tribes and local units of government under the new program in Article 4. [H.F. 2701, 2<sup>nd</sup> eng.]

- 1 Local government.** Links the definition of “local government” for state disaster assistance purposes to the federal definition promulgated by FEMA as of 2012. That definition is:  
  
*“Local government: (i) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; (ii) An Indian tribe or authorized tribal organization, or Alaska Native village or organization; and (iii) A rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.”*
- 2 Nonfederal share.** Links definitions of “nonfederal share” (of FEMA Public Disaster Program assistance in chapters 12 and 12A. The definition would reside in chapter 12A. The nonfederal share – or the portion of total eligible damages that is not eligible for FEMA assistance – is sometimes referred to as the “FEMA match” and is typically 25 percent, with FEMA paying the remaining 75 percent of eligible costs.
- 3 Subgrant agreements; state share.** Requires the state to pay 100 percent of the nonfederal share for FEMA Public Assistance to local units of government, as defined above.
- 4 Disaster contingency account; appropriation.** Creates a contingency account in the general fund. Establishes an ongoing, statutory appropriation to DPS. The appropriation would provide state dollars to (1) state agencies and local units of government (as defined) to pay 100 percent of the nonfederal share for FEMA public disaster assistance, and (2) local units of government (as defined) under the new program created in article 4. If the balance of the contingency account is not sufficient to make all payments, up to \$4,000,000/fiscal year of additional dollars would be appropriated from the general fund to DPS, but only after the commissioner of management and budget (MMB) reports estimated additional expenditures to legislative committees and approves the payments. Requires an annual report on appropriations and expenditures. Requires the governor to propose funding for the contingency account as part of the governor’s budget recommendation to the legislature.

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Provides that neither funds in the contingency account nor appropriations from the account expire.

- 5        **Appropriation.** Technical.
- 6        **Local government.** Links the definition of “local government” for purposes of chapter 12A to the new chapter 12 definition established in section 1.
- 7        **Nonfederal share.** Defines the term as the portion of total FEMA Public Assistance Program eligible disaster costs that is not eligible for FEMA reimbursement, not to exceed 25 percent.
- 8        **Nonduplication of federal assistance.** Replaces the term “matching” (money for FEMA assistance) with “cost-share”. Replaces the terms “political subdivision” and “Indian tribe” with the new term “local government” defined in section 1.
- 9        **State cost-share for federal assistance.** Authorizes appropriations to pay for 100 percent of the nonfederal share for state agencies and local units of government.
- 10       **Disaster assistance.** Requires MMB to transfer unspent and expiring disaster assistance appropriations to the new contingency account. Requires MMB to report each transfer to the legislature.
- 11       **Effective date.** Article 3 is effective the day following final enactment.

### **Article 4: Disaster Assistance for Public Entities; Absent Federal Aid**

#### **Overview**

This article establishes a new disaster relief program for local units of government and American Indian tribes that are not eligible to receive FEMA assistance or corresponding state disaster aid under chapter 12A but sustained eligible damages, on a per capita basis, greater than or equal to 50 percent of FEMA’s county per capita impact indicator. [H.F. 2701, 2<sup>nd</sup> eng.]

- 1        **Public Disaster Assistance; Absent Federal Aid.** States the purpose of this new chapter.
- 2        **Definitions.** Defines key terms, including “local government,” (same as Article 3) “disaster,” and “incident period.”
- 3        **Eligibility criteria; considerations.** Authorizes DPS to award grants to eligible local government applicants. Establishes what constitutes a qualifying disaster. Requires DPS to consider an applicant’s ability to access other resources and the availability or existence of insurance.
- 4        **Eligible costs.** States that eligible costs are those that would be eligible for FEMA Public Assistance Program grants had FEMA assistance been available to the local unit of government. FEMA Public Assistance Program eligible cost categories are:

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### Emergency Work

- Debris removal – Clearance of trees and woody debris; certain building wreckage; damaged/destroyed building contents; sand, mud, silt, and gravel; vehicles; and other disaster-related material deposited on public and, in very limited cases, private property.
- Emergency protective measures – Measures taken before, during, and after a disaster to eliminate/reduce an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures.

### Permanent Work

- Roads and bridges – Repair of roads, bridges, and associated features, such as shoulders, ditches, culverts, lighting, and signs.
- Water control facilities – Repair of drainage channels, pumping facilities, and some irrigation facilities. Repair of levees, dams, and flood control channels are eligible on a restricted basis.
- Buildings and equipment – Repair or replacement of buildings, including their contents and systems; heavy equipment; and vehicles.
- Utilities – Repair of water treatment and delivery systems; power generation facilities and distribution facilities; sewage collection and treatment facilities; and communications.
- • Parks, recreational facilities, and other facilities – Repair and restoration of parks, playgrounds, pools, cemeteries, mass transit facilities, and beaches. This category also is used for any work or facility that cannot be characterized adequately by the categories above.

- 5 Applicant's share.** Limits state grants to 75 percent of the applicant's eligible costs. Lists volunteer and in-kind contributions that count as part of the applicant's 25 percent share.
- 6 Application process.** Requires DPS to develop application materials. Establishes the application submission and review process.
- 7 Claims process.** Requires an applicant to submit a claim for payment of actual and eligible costs. Provides a process for applicants to challenge a claim denial. Authorizes DPS to inspect all work submitted for payment. Requires an applicant to properly account for all disaster grants received and to submit to an audit by DPS or the Office of the Legislative Auditor.
- 8 Funding from other sources; repayment required.** Requires a grant recipient to refund the money to the state if the recipient subsequently receives money for the same purpose from a different source.

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- 9 **Effective date.** Article 4 is effective the day following final enactment.

### **Article 5: Criminal Expungement**

#### **Overview**

This article contains a variety of reforms to the state's expungement laws. The article: amends laws governing disclosure of background study results by the Commissioner of Human Services; expands judicial expungement authority over juvenile expungements; requires business screening records to keep their criminal records current; allows for eviction records to be expunged at the time of judgment; expands the scope of statutory expungement in chapter 609A; creates a path to expungement without petitioning the court; amends the factors for a court to consider in granting a statutory expungement; amends the law governing access to expunged records; and creates additional notice requirements for expungement orders. [H.F. 2576, 4<sup>th</sup> eng.]

- 1 **Classification of certain data.** Keeps an expunged record private if the Commissioner of Human Services disqualifies an applicant based on the expunged record.
- 2 **Disqualification that is rescinded or set aside.** Prohibits the Commissioner of Human Services from notifying an employer of an expunged criminal record when the Commissioner disqualifies an applicant based on the expunged offense.
- 3 **Expungement.** Amends the juvenile records expungement statute to give courts authority to expunge all records relating to the arrest and delinquency proceedings, rather than just the adjudication of delinquency. This is in response to the decision of the Minnesota Supreme Court in the *J.J.P.* case, 831 N.W.2d 260 (Minn. 2013), in which it interpreted the statute as applicable only to the adjudication record and not additional documents, such as arrest and investigative records. The most significant effect of this amendment would be to give courts authority to expunge these delinquency records when held by executive branch entities. In addition, the standard to be applied by the court is more clearly delineated and a list of factors to be considered is included.

Juvenile records expunged prior to the effective date of this act may not be shared or exchanged. For juvenile records expunged after the effective date of this act, sharing of records between criminal justice agencies is authorized, consistent with the new provisions governing adult records in section 11, and the statute governing appeals of adult expungements would apply.

- 4 **Deletion of expunged records.** Amends the law governing business screening services to require a business screening service that knows a criminal record has been sealed, expunged, or is the subject of a pardon to promptly delete the record. While this may be implied under current law, it is not explicitly stated (in contrast, there is specific language in Minnesota Statutes, section 504B.241, subdivision 4, governing residential tenant screening services).

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- 5**      **Evictions.** Amends the eviction law to explicitly give the court authority to expunge records relating to the action at the time judgment is entered or after that time in cases where the defendant prevailed. The effect of this amendment is to allow the defendant to move for an expungement as part of the eviction proceeding, rather than bringing a separate petition or motion under Minnesota Statutes, section 484.014, which is the general law governing expungement of eviction records.
- 6**      **Statutory expungement.** Amends the general law governing the circumstances under which criminal records may be expunged. Under current law, an expungement petition may be brought only when authorized under law. The grounds for an order under Minnesota Statutes, section 609A.02, include certain controlled substance offenses, juveniles prosecuted as adults, and criminal proceedings resolved in favor of the petitioner. Under paragraph (a), three new categories of criminal proceedings or convictions are added:
- petitioner has successfully completed the terms of a diversion program or stay of adjudication and has not been charged with a new crime for at least *two* years since completion of the program or stay of adjudication;
  - petitioner was convicted of or received a stayed sentence for a petty misdemeanor, misdemeanor, or gross misdemeanor and has not been convicted of a new crime for at least *five* years since discharge of the sentence; or
  - petitioner was convicted of or received a stayed sentence for a felony violation of an offense listed in paragraph (b) and has not been convicted of a new crime for at least *eight* years since discharge of the sentence.

Paragraph (b) lists the felonies that would be eligible for expungement. It includes most offenses that are a severity level 1 or 2 under the Sentencing Guidelines, other than (1) certain person offenses and (2) those that are crimes of violence for purposes of permit to carry disqualifications and codified in chapter 609.

Until July 15, 2015, paragraph (c) prohibits the expungement of stayed sentences in cases of sexual or domestic abuse, stalking, and harassment.

- 7**      **Petitionless expungement.** Provides for expungement without the filing of a petition in certain cases where the prosecutor agrees to the sealing of a criminal record, unless the court determines that the interests of public safety in keeping the record outweigh the disadvantages to the subject. It would apply to the categories of persons authorized to seek an expungement under Minnesota Statutes, section 609A.02, subdivision 3 (see section 6). A victim notification requirement is included.

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**8 Nature of remedy; standard.** Amends the law governing the standards for granting an expungement. The general rule under current law is that the petitioner has the burden of proving by clear and convincing evidence that expungement would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of sealing the record and burdening the court and other authorities. However, in cases where the proceedings were resolved in favor of the petitioner, the burden of proof switches to the agency or jurisdiction whose records would be affected. This amendment would add cases where the petitioner has successfully completed the terms of a diversion program to the situations where the agency has the burden of proof. For the other new categories in section 6, the petitioner would continue to have the burden of proof. This section also includes additional factors to be considered by the court in making its determination. New language clarifies that a court may order an expunged record sealed, regardless of whether it would otherwise be public law enforcement or criminal history data or public under other law.

Prohibits expunged records from being introduced in civil litigation against an employer or landlord for alleged misconduct of an employee or tenant, if the records were expunged before the occurrence giving rise to the civil action.

**9 Order when context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and person's status as a crime victim.** Creates special protections for persons who have a record expunged and the person is deemed a crime victim and there is a nexus between the expunged record and the person's status as a crime victim.

**10 Limitations of statutory expungement.** Establishes that current standards for accessing expunged records apply to records expunged prior to January 1, 2015.

**11 Limitations on statutory expungement.** Amends the law governing access to records expunged on or after January 1, 2015. Except for in certain cases where a person was found not guilty, the new language allows the exchange of expunged records between criminal justice agencies, similar to the current authority for the exchange of law enforcement data under Minnesota Statutes, section 13.82, subdivision 24. This replaces and expands current law, which authorizes opening an expunged record for a criminal investigation, prosecution, or sentencing but requires an ex parte court order.

Under current law, if law enforcement, prosecution, or corrections authorities request access to a record subject to an expungement order, they must be informed of the existence of the record and the right to obtain access to it with a court order. This language is modified, consistent with the new provision allowing the exchange of expunged records, to require an agency or jurisdiction subject to an order to maintain the record in a manner that provides access by a criminal justice agency but informs the recipient that the record is sealed. If a request is made by the commissioner of human services, the commissioner must be notified of the existence of the record and of the right to obtain access to it. Language is added explicitly stating that an expunged record remains subject to the expungement order in the hands of the person receiving it.

**Effective date.** Applies to records expunged on or after January 1, 2015.



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- 12**      **Distribution and confirmation of expungement order.** Expands the current requirements related to distribution of expungement orders to require court administrators to notify petitioners of the entities that received the order and to require those entities to send a letter to the petitioner confirming that the record is expunged. Data on the petitioners in these letters is classified as private data.
- 13**      **Agency compliance.** Requires criminal justice agencies to comply with section 11 by January 1, 2016.